

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
(Eastern Division)

CHARLES JOHNSON and :
GOT NEWS, LLC :
: Plaintiffs, :
: : Case No. 15-cv-001137
v. :
: GAWKER MEDIA, LLC, J.K. TROTTER, :
and GREG HOWARD :
: Defendants. :
:

PLAINTIFF'S MOTION SEEKING LEAVE FROM THE COURT TO CONDUCT
DISCOVERY

I. PLAINTIFF'S MOTION TO CONDUCT DISCOVERY

Plaintiffs respectfully move for the entry of the attached proposed Order to conduct discovery pursuant to Rules 56 and 26 (f) of the Federal Rules of Civil Procedure. Plaintiffs' counsel have found case law which suggests that, by the Rules Enabling Act, the Federal Rules for Civil Procedure are the controlling rules for Federal Court matters. This case law suggests that California's Anti-SLAPP statute, being of a procedural nature, is precluded by Federal Law.

See pp. 3-4 of Plaintiffs' accompanying Memorandum in Support. California's anti-SLAPP statute mandates a stay of all discovery pending the court's resolution of a motion to strike. Cal. Civ. Proc. Code § 425.16(g). However, the court in *Metabolife International, Inc. v. Wornick*, held "the discovery-limiting aspects of § 425.16(f) and (g) collide with the discovery-allowing aspects of Rule 56," and refused to apply the statute's discovery provisions in federal court.

Metabolife International, Inc. v. Wornick, 264 F.3d 832 (9th Cir. 2001). Accordingly, Plaintiffs should be granted leave to conduct discovery in compliance with Rule 56. Therefore, Plaintiff

hereby incorporates by reference as if fully stated herein, Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion Seeking Leave from the Court to Conduct Discovery.

Conclusion

For the foregoing reasons, Plaintiffs request that the Court grant their Motion to Conduct Discovery.

WHEREFORE, Plaintiffs move the Court to approve the above-proposed Motion to Stay.

Respectfully submitted,

THE BURNS LAW FIRM, LLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served, via the Court's electronic notification system, on December 21, 2015, upon all parties of record.

/s/ John C. Burns